

ID:02040affidavitbww

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

KATHRYN MARSHALL

CASE NO. C-1-02-189

VENA MARSHALL

Judge Herman Weber

Plaintiffs

Magistrate Judge Hogan

vs.

OHIO DEPARTMENT OF EDUCATION

NEW BOSTON PUBLIC SCHOOLS

LOWELL HOWARD

**AFFIDAVIT OF BERNARD W.  
WHARTON**

BERNARD TILLEY

MELINDA BURNSIDE

JERRY BENTLEY

LAURA WESSEL

PAT POTTER

Defendants

STATE OF OHIO,

COUNTY OF HAMILTON, SS:

Bernard W. Wharton being first duly sworn, states as follows:

1. I am counsel for the defendants in this matter.
2. On May 18, 2005, I sent to counsel for the plaintiffs', Joseph Bansci,

defendants first set of interrogatories and requests for production of documents propounded to plaintiffs. Copy of that letter is attached as Exhibit A to this Affidavit.

3. On June 20,2005, I had not received any response from Mr. Bansci, and sent him a letter on the same date inquiring as to when I might expect his clients' answers to the defendants' discovery requests. A copy of this letter is attached as Exhibit B.

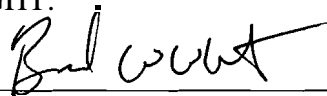
4. On or around June 24,2005, I received the hand-written discovery responses from Sandra Marshall as well as several documents. Copy of the hand-written responses are attached at Exhibit C to this affidavit.

5. In response to these inadequate responses, I sent a letter on June 24,2005 to Mr. Bansci outlining the problems with his clients responses. A copy of that letter is attached at Exhibit D to this Affidavit.

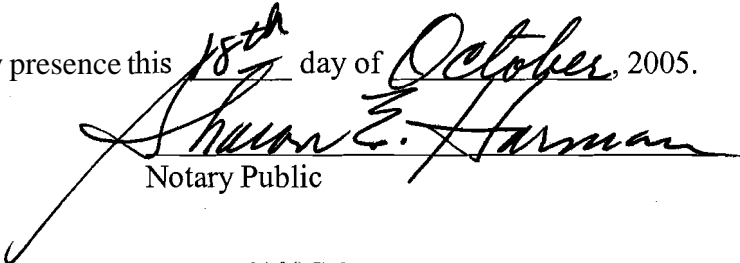
6. I did not receive any response from Mr. Bansci following my letter to him of June 24,2005, and therefore sent letters to Mr. Bansci on July 20,2005, August 25,2005, September 19, 2005 and October 12,2005. Copies of those letters are attached at Exhibits E, F, G. and H. to this Affidavit.

7. To date, I have received no response from Mr. Bansci on the issues raised in my numerous letters to him.

FURTHER AFFIANT SAYETH NAUGHT.

  
Bernard W. Wharton

Sworn to before me in my presence this 15<sup>th</sup> day of October, 2005.

  
Notary Public

**SHARON E. HARMAN**  
Notary Public, State of Ohio  
My Commission Expires July 1, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of October, 2005 , a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Gary Winters  
R. Gary Winters 0018680  
Bernard W. Wharton 0063487  
McCASLIN, IMBUS & McCASLIN  
Attorneys for Defendants  
Suite 900 Provident Building  
632 Vine Street  
Cincinnati, OH 45202-2442  
(513) 421-4646 Telephone  
(513) 421-7929 Facsimile  
[rgwinters@mimlaw.com](mailto:rgwinters@mimlaw.com)  
[bwwharton@mimlaw.com](mailto:bwwharton@mimlaw.com)

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THOMAS J. GRUBER\*  
JOSEPH C. GRUBER  
WILLIAM M. CUSSEN\*  
JOHN K. HURD  
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MICHAEL P. CUSSEN\*  
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STEPHEN M. BERNAT\*\*

OF COUNSEL  
JOHN P. CONCANNON

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May 18, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

Enclosed please find Defendants' First Set of Interrogatories and Requests for Production of Documents Propounded to Plaintiffs which we have prepared in this matter. If you would like a copy of these documents forwarded to you electronically, please provide me with your formatting requirements and we will be happy to forward them to you.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/bab  
ID:020401 bancsi 3  
Enclosure

EXHIBIT *A*

PHILIP J. MARSICK\*  
R. GARY WINTERS\*  
THOMAS J. GRUBER\*  
JOSEPH C. GRUBER  
WILLIAM M. CUSSEN\*  
JOHN K. HURD  
BERNARD W. WHARTON  
MICHAEL P. CUSSEN\*  
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STEPHEN M. BERNAT\*\*

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June 20, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

**Re: Marshall, et al. v. Ohio Dept. of Education, et al.**  
**U.S. District Court**  
**Case No. : C-1-02-189**  
**Our File : 02-04-01**

Dear Mr. Bancsi:

I sent your clients a set of Interrogatories and Request for Production of Documents on May 18, 2005. The 30-day period for answering those discovery requests has passed. Please let me know when I may expect your client's answers to our discovery requests.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/pjs  
ID:G:\Phyl\2005 Correspondence\020401 Bancsi.wpd

EXHIBIT *B*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

EDDIE F. MARSHALL  
SANDRA D. MARSHALL  
VENA MARSHALL  
KATHRYN P. MARSHALL

CASE NO. C-1-02-189

Judge Herman Weber

Plaintiffs

Magistrate Judge Hogan

vs.

OHIO DEPARTMENT OF EDUCATION

NEW BOSTON PUBLIC SCHOOLS

LOWELL HOWARD

BERNARD E. TILLEY, JR.

MELINDA BURNSIDE

LINDA WESSEL

JERRY BENTLEY

LAURA WESSEL

PATRICIA K. POTTER

Defendants.

**DEFENDANTS' FIRST SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED TO PLAINTIFFS**

Pursuant to Federal Civil Rules 33 and 34, defendants propound the following interrogatories and request for production of documents to plaintiffs. Interrogatories are to be answered fully, in writing and under oath no later than thirty (30) days after the service hereof. Items requested are to be produced at the offices of McCaslin, Imbus & McCaslin, Suite 900 Provident Bank Building, 632 Vine Street, Cincinnati, Ohio 45202, not later than thirty (30) days after the service hereof.

If plaintiffs are unable to answer fully any interrogatory, or respond fully to any production request, plaintiffs are to answer or respond with such information as is presently available to them or their attorney.

**EXHIBIT** 

INTERROGATORIES

1. State the name and address of the person or persons responding these discovery requests.

ANSWER:

*Sandra D. Marshall  
4308 Gallia Street  
New Boston, Ohio 45662*

*740-456-6531 phone*

2. State the name and address of each person, known to you, who has knowledge of the facts and/or circumstances set forth in your Complaint and your Amended Complaint.

ANSWER:

*I don't understand the question fully.  
The one person knowledgeable besides our attorneys is:*

*Mr. Walter Callahan  
P.O. Box 17  
Argillite, Kentucky 41121  
606-473-5867 phone*

3. State the name and address of each person whom you expect to call as an expert witness at the trial of this matter, and for each such expert state the subject matter upon which he or she is expected to testify.

ANSWER:

*We are undecided to date. Later our  
attorney will decide for us.*

4. State the name and business address of all medical providers who treated any or all plaintiffs have seen as a result of the allegations of the Complaint and Amended Complaint.

ANSWER:

*Listing is attached here*

## MEDICAL RECORDS

**Dr. Newman** 776-2146 Family Physician ( 2001 to date )  
5611 Gallia Street, Sciotoville, Ohio 45662

**Dr. Arnette** 353-5002 Kathryn, Abbey, Vena, Mom, Matt (2000 to date)  
1611 27th Street, Portsmouth, Ohio 45662

**Lori Guinn** 356-8425 Bldg. "H", up steps, 2nd door on left. Vena, Abbey, Matt (2002)  
27th Street, SOMC Building "H", Portsmouth, Ohio 45662

**Dr. Carver** 353-1548 FAX 353-7198 Vena and Kathryn. ( 2000 - 2002 )  
500 Chillicothe Street, Suite #306, Portsmouth, Ohio 45662

**Shawnee Mental Health Center, Inc.** 740-354-1010 For Kathryn only. ( 2003 )  
901 Washington Street, Portsmouth, Ohio 45662

**Dr. Wasim Deeb** 353-7881 Bldg "C" Kathryn only. ( 2005 )  
1735 27th Street, Bldg "C", Portsmouth, Ohio 45662

**SOMC & Urgent Care, Wheelersburg** 740-574-9090 All Family ( 1997 to date )  
8770 Ohio River Road, Wheelersburg, Ohio 45694

**St. Anne's Hospital** 614-898-4000 Kathryn only. ( 2002 or 2003 )  
500 South Cleveland Avenue, Westerville, Ohio 43224

**OSU James Cancer Center** 614-293-3300 Ed, 1998  
300 West 10th Avenue, Columbus, Ohio 43212

**Dr. Anne Joseph, M.D.** 614-722-2000 Kathryn and Vena ( 2001-2003 )  
Pediatric Neurology, Children's Hospital, 700 Children's Drive, Columbus, Ohio 43205

**Dr Mary Ann Murphy, M.D.** 614-221-9922 Vena, (2002-2003)  
Department of Psychiatry, East Central -CHGC, 899 East Broad Street,  
Columbus, Ohio 43205

**Dr. John T. Beetar, PhD.** 614-722-4700 Vena, (2002-to date)  
Pediatric Neuropsychology, Department of Psychology, Children's Hospital,  
700 Children's Drive, Columbus, Ohio 43205-2692



5. State the name and business address of all medical providers who treated any or all of the plaintiffs in the last ten (10) years.

ANSWER:

*Same list, attached here.*

6. Please state the specific life activities impaired by Vena Marshall's epilepsy and what medical care provider diagnosed such impairments.

*Diagnoses: Dr. Joseph, Dr. Beetar, Dr. Murphy, Dr. Newman.*

ANSWER: *Vena's epilepsy and brain venous anomaly are life long conditions. Vena's cognitive reasoning, memory, some coordination of speech due to hindered recall make everyday learning + life challenging. Vena will always need supervision when bathing, climbing + most driving. No swimming. Child birth and raising children have to be done very well planned with supervision + much caution. She is always "at risk".*

7. Please state the date upon which the plaintiffs converted to Judaism and how the conversion occurred.

*I do not fully understand this question.... and I am insulted by this question. I am a Jew. My*

ANSWER: *children, ages 9-12 yrs old came home from school and said: "Mother, you taught us something dirty.... we are dirty Jews. Everyone at school tells us this and no one is stopping it. So, we will not be Jewish! At Christian Chapel, some are yelled at names and some are locked into rooms, and all of us must pray exactly as the teachers say. We will not be Christian either. We will be nothing! you tell us to respect + learn from these people?!??"*

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents used in the answering the above interrogatories.

RESPONSE:

*Enclosed are the records.*

2. Produce all medical records of plaintiff Vena Marshall.

RESPONSE: *Some are here, some are still being copied and will arrive to you in about three weeks.*

3. Produce all medical records plaintiff Eddie F. Marshal..

RESPONSE: *The same as #2 above.*

4. Produce all medical records of plaintiff Sandra Marshall.

RESPONSE: *The same as #2 above.*

5. Produce all medical records of plaintiff, Kathryn Marshall.

RESPONSE: *The same as #2 above.*

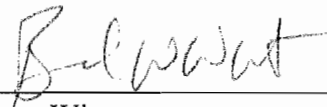
6. Produce documents concerning all correspondence you had with New Boston Public School District concerning plaintiff Vena Marshall and plaintiff Kathryn Marshall.

RESPONSE: *Records enclosed.*

7. Produce all documents concerning any IEP for plaintiff Vena Marshall and plaintiff Kathryn Marshall.

RESPONSE: *Records enclosed.*

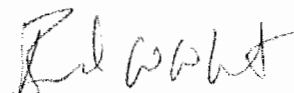
Respectfully submitted.

  
\_\_\_\_\_  
R. Gary Winters (0018680)  
Bernard W. Wharton (0063487)  
Attorney for Defendants  
McCASLIN, IMBUS & McCASLIN, LPA  
632 Vine Street, Suite 900  
Cincinnati, OH 45202-2442  
(513) 421-4646  
(513) 421-7929 (facsimile)  
E-mail: [rgwinters@mimlaw.com](mailto:rgwinters@mimlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of May, 2005, a copy of the foregoing document was served via ordinary mail upon:

Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113  
ATTORNEY FOR PLAINTIFFS

  
\_\_\_\_\_  
R. Gary Winters (0018680)  
Bernard W. Wharton (0063487)

McCASLIN, IMBUS  
& McCASLIN  
A LEGAL PROFESSIONAL ASSOCIATION  
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IAN R. SMITH\*  
STEPHEN M. BERNAT\*\*

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June 24, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

I have just received a large box directly from your clients that contains some hand-written discovery responses and several binders of documents. There are numerous problems with this.

First, it is not appropriate for your clients to be directly corresponding with me when you represent them. If they wish to properly answer the discovery requests, they should get them to you so you can sign any objections that are raised in the discovery responses and so that you can insure that they have accurately answered the discovery requests. Furthermore, there is no certificate of service from you that accompanies these discovery responses.

Substantively, there are numerous problems with your clients' answers. Taking them in order, the first problem is with the answer to Interrogatory No. 2. Your clients state that they do not understand the question fully and can only identify one person who has knowledge of the facts and/or circumstances set forth in their Complaint and Amended Complaint. Putting aside the fact that they should have at least identified all of the individual parties to this lawsuit, I do not believe that there is only one witness to all of the allegations they have set forth in their Complaint and Amended Complaint. Please have them supplement this interrogatory answer appropriately.

Next, the response to Interrogatory No. 6 does not identify the medical care providers who diagnosed the impairment of the specific life activities listed in your clients' answer. Please have them do so.

EXHIBIT *D*

Mr. Bansci  
page 2.  
June 24, 2005

With respect to Interrogatory No. 7, your clients indicate that they do not understand the question. It is a straightforward question, and please work with your clients to have them understand it. It is our understanding that your clients converted to Judaism and joined a synagogue in their area. Please have them answer the question as to when that occurred and how it occurred. The bulk of your clients' answer is completely non-responsive.

A final problem with your clients' responses is that they are unverified. Please have your clients execute the proper verification of their interrogatory answers.

I look forward to your response to these issues and the supplemented discovery responses from your client. If you have any questions, please give me a call.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/sh  
ID:020401 bansci 4



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R. GARY WINTERS\*  
THOMAS J. GRUBER\*  
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JOHN K. HURD  
BERNARD W. WHARTON  
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STEPHEN M. BERNAT\*\*

OF COUNSEL  
JOHN P. CONCANNON

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July 20, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

I have not heard from you in response to my letter of June 24, 2005 concerning the inadequacy and mistakes in your clients' discovery responses. Please let me know how you plan to address the issues I raised in my previous letter. I do not wish to go to Judge Hogan on this issue if we can work it out extrajudicially. I await your reply.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/sh  
ID:020401 bancsi 5

EXHIBIT E

PHILIP J. MARSICK\*  
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TELEPHONE (513) 759-9123  
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August 25, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

I still have not heard from you in response to my letters of June 24, 2005 and July 20, 2005. If I do not hear from you by the end of August, I will be forced to bring this matter to the Court's attention in a more formal manner. I await your reply.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/sh  
ID:020401 bancsi 7

EXHIBIT E

PHILIP J. MARSICK\*  
R. GARY WINTERS\*  
THOMAS J. GRUBER\*  
JOSEPH C. GRUBER  
WILLIAM M. CUSSEN\*  
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TELEPHONE (513) 759-9123  
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September 19, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

Thank you for your telephone call the other day. I would like to set up the depositions of your clients Vena and Kathryn Marshall. We can schedule those to be held after the Court has ruled upon our motion to dismiss.

In the meantime, can you please address the issues in my letters of June 24, July 20 and August 25? I would certainly appreciate it.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/sh  
ID:010401 bansci 8

EXHIBIT 



PHILIP J. MARSICK\*  
R. GARY WINTERS\*  
THOMAS J. GRUBER\*  
JOSEPH C. GRUBER  
WILLIAM M. CUSSEN\*  
JOHN K. HURD  
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October 12, 2005

Mr. Joseph Bancsi  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, OH 44113

Re: Marshall, et al. v. Ohio Dept. of Education, et al.  
U.S. District Court, Case No. C-1-02-189  
Our file: 02-04-01

Dear Mr. Bancsi:

Can you let me know why you and your clients have not responded to my previous letters on the problems with your clients' discovery responses as outlined in my initial letter of June 24, 2005? If you and your clients believe that these issues are unresolvable, please let me know and I will bring them to the Court's attention.

You will also recall that I gave you permission to extend the deadline line for identifying experts and producing reports, but have not yet seen any such information from you. Please confirm that you will be using no experts in this matter.

Finally, now that Mr. and Mrs. Marshall have been dismissed as parties, I would like to schedule the depositions of Vena and Kathryn Marshall. If I do not hear from you, I will simply notice those depositions. I would like to work together to move this case forward.

Very truly yours,

McCaslin, Imbus & McCaslin

Bernard W. Wharton

BWW/sh  
ID:020401 bansci 9

EXHIBIT *H*